

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Zaire Hitimana Kihutu,
also known as Laris Kihutu Mpagazihe,

No. 17-cv-4927 (WMW/TNL)

Plaintiff,

v.

**REPORT &
RECOMENDATION**

Ryan Wilson,
UPS Store, and

Holiday Stationstore,

Defendants.

On November 7, 2017, the Court granted Plaintiff's application to proceed *in forma pauperis*. (ECF No. 3.) The Court directed Plaintiff to "submit a properly completed Marshal Service Form (Form USM-285) for each defendant" within 30 days. (ECF No. 3 at 1.) Plaintiff did not correctly complete the Marshal Service Forms. (*See* ECF No. 7.) By letter dated December 7, 2017, the Clerk of Court informed Plaintiff that the Marshal Services Forms were completed incorrectly and provided Plaintiff with two new Marshal Service Forms to complete. (ECF No. 7.)

To date, Plaintiff has had no further correspondence with the Court. The Court previously warned Plaintiff that failure to return completed Marshal Service Forms may result in this matter being dismissed without prejudice for failure to prosecute. (ECF No. 3 at 1.)

Based on Plaintiff's failure to return completed Marshal Service Forms and extended lack of correspondence with the Court, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute.

Date: November 6, 2018

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

Kihutu v. Wilson et al.
Case No. 17-cv-4927 (WMW/TNL)

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).